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GOVERNMENT GAZETTE

BOLETIM OFICIAL

(Tradução)

GOVERNMENT OF GOA DAMAN
AND DIU

General Administration Department

Collectorate of Goa

Order

LS/REV/147/68/5899

Read:— Government letter no. RD/LND/289/69, dated 3-11-1969.

Whereas the Government land known as «Compreamol», situated at Tirvona of Cotigão, Canacona Taluka, shown in the plan no. 16689, admeasuring 56887,70 square metres, was assigned to Shri Soiru Naraina Camotim, under Alvara no. 1654, dated 30-7-1954;

Whereas during the inspection to the said land it has been verified that an area admeasuring 25399,00 square metres is lying waste in contravention to the provisions of Section 36 of Decree no. 3602, dated 24-11-1917.

Whereas show cause notice was served on Shri Arun Soiru Kamat, the present holder of the land, in accordance with para 2 of Section 307 of the above cited Decree.

And whereas Government in consideration of the reply of said Shri Kamat to the show cause notice decided to retain in his possession the cultivated portion admeasuring 31488,70 square metres on payment of the annual ground rent fixed to the entire land at the time of assignment;

Now, therefore, I, D. N. Barua, Collector of Goa, in exercise of the powers vested in me by virtue of the Government Notification no. DF-1161-AGR-65, dated 9-6-1966, order that the area lying waste, admeasuring 25399,00 square metres, be reverted to the Government in accordance with Section 307 of Decree no. 3602, dated 24-11-1917.

D. N. Barua, Collector of Goa.
Panaji, 28th November, 1969.

Special Department

Notification

OSD/RRVS/39/66-Vol. IV

In exercise of the powers conferred by Rule 22 of the Goa, Daman and Diu Civil Service Rules, 1967, read with sec-

GOVERNO DE GOA, DAMÃO
E DIO

Departamento de Administração Geral

Repartição do Collectôr de Goa

Portaria

LS/REV/147/68/5899

Ref: Nota do Governo n.º RD/LND/289/69, de 3 de Novembro de 1969.

Atendendo a, que o terreno do Estado denominado «Compreamol», situado em Tirvona de Coligão, do concelho de Canacona, indicado no plano n.º 16689, medindo 56887,70 m², que havia sido concedido ao Sr. Soiru Naraina Camotim, por alvará n.º 1654, de 30 de Julho de 1954;

Tendo em consideração que durante a inspecção ao referido terreno, verificou-se que uma área medindo 25399,00 m² se achava inculta, em infracção do disposto no artigo 36.º do Decreto n.º 3602, de 24 de Novembro de 1917;

Atendendo a que ao Sr. Arun Soiru Kamat, presente detentor do terreno, foi avisado a apresentar razões justificativas de acordo com o § 2.º do artigo 307.º do citado decreto;

Considerando a resposta do Sr. Kamat, que está disposto a reter a área cultivada em sua posse, medindo 31488,70 m², comprometendo-se a pagar a renda anual fixa por todo o terreno, ao tempo da concessão;

No uso das faculdades que me são conferidas pelo despacho n.º DF-1161-AGR-65, de 9 de Junho de 1966, eu, D. N. Barua, Collector de Goa, determino que a área inculta, medindo 25399,00 m², reverta ao Estado, de acordo com o artigo 307.º do Decreto n.º 3602, de 24 de Novembro de 1917.

D. N. Barua, Collector de Goa.
Panaji, 28 de Novembro de 1969.

Departamento Especial

Despacho

OSD/RRVS/39/66-Vol. IV

No uso das faculdades conferidas pela norma 22.ª do «Goa, Daman and Diu Civil Service Rules, 1967» conjugada com o

tion 3(1) of the Goa, Daman and Diu Mamlatdars' Court Act, the Administrator of Goa, Daman and Diu is pleased to appoint Sarvashri A. Venkataratnam and R. I. Jai Prakash, probationers, Grade II Officers of the Goa, Daman and Diu Civil Service as Joint Mamlatdars in the Tiswadi Taluka, Panaji, with effect from 1st November, 1969, for a period of six months.

The above Officers will not be in full charge of the Taluka, but they may independently dispose of such of the revenue, tenancy and magisterial cases as transferred to them by the full-fledged Sub-Divisional Officer and Mamlatdar of the Taluka or by the Collector and District Magistrate Goa, or by the Government. They will do this work for three days in a week and for the remaining three days they will attend the Offices of Commissioner of Revenue and Taxes, Additional Commissioner of Revenue and Taxes, Labour Commissioner, Land Survey Department, Directorate of Transport, First Class Magistrate's Court and the Inspector General of Police, to obtain practical knowledge of the various Acts, rules and regulations.

The respective Officers will draw their programme of training and send a copy thereof to the Special Department, for information.

The appointments of the two probationers are as follows:

1. Shri A. Venkataratnam against the third vacancy sanctioned as Training Reserve in Schedule I of the said Service.
2. Shri R. I. Jai Prakash, against the vacancy of leave reserve sanctioned in Schedule I of the said Service. The training period of Shri Jai Prakash will, however, be treated as on duty under F. R. 9(6).

By order and in the name of the Administrator of Goa, Daman and Diu.

D. V. Sawant, Under Secretary (Appointments).

Panaji, 15th November, 1969.

Finance (Expenditure) Department

Memorandum

3-93/67/Fin(Exp) Vol.III

The Government of India, Ministry of Home Affairs, New Delhi, in their letter No. 1/38/69-GP dated 19th November, 1969 have equated the post of «Escriturário Chefe» carrying the pre-liberation of Rs. 366.66 held by Shri Justino Filipe de Noronha in the Excise Department, Goa, to that of Head Clerk in the Central Scale of pay of Rs. 210-10-290-15-320-EB-15-380, with specific stipulation that this would be personal to him.

V. S. Srinivasagopalan, Under Secretary (Finance).

Panaji, 2nd December, 1969.

Finance (Revenue) Department

Notification

Fin (Rev)/2-41/Part/2548/69

In exercise of the powers conferred by sub-section (3) of Section 5 of the Goa, Daman and Diu Entertainment Tax Act, 1964 Government is hereby pleased to exempt from the payment of entertainment tax the screening of the film «Aashirvad» directed by Hrishikesh Mukherjee, in the Union Territory of Goa, Daman and Diu.

By order and in the name of the Administrator of Goa, Daman and Diu.

Puran Singh, Finance Secretary.

Panaji, 2nd December, 1969.

artigo 3(1) do «Goa, Daman and Diu Mamlatdar's Court Act, o Administrador de Goa, Damão e Diu nomeia os Srs. A. Venkataratnam e R. I. Jai Prakash, oficiais probatórios de 2.ª classe, do Quadro de Funcionalismo Civil de Goa, Damão e Diu, para exercer as funções de Mamlatdares adjuntos do concelho de Tiswari, em Panaji, a partir de 1 de Novembro de 1969, por período de 6 meses.

Os mesmos oficiais não ficarão totalmente à testa do concelho, mas poderão dispor independentemente dos casos fiscais de arrendamento e outros casos de justiça que lhes forem transferidos pelo oficial sub-divisional e Mamlatdar do concelho ou pelo Collector e Magistrado Distrital de Goa ou pelo Governo. Os mesmos desempenharão essas funções durante três dias, em cada semana e durante os restantes três dias, os mesmos trabalharão nas Repartições do Comissário de Rendimentos e Impostos, Comissário de Trabalho, Repartição de Agrimensura, Direcção dos Serviços de Transportes, Tribunal do Magistrado de 1.ª classe e Repartição do Inspector-Geral da Polícia, a fim de terem conhecimento prático de várias leis, normas e regulamentos.

Os referidos oficiais deverão elaborar o programa de seu treino e enviar uma cópia do mesmo, ao Departamento Especial, para conhecimento.

As nomeações dos dois probatórios são como a seguir se indica:

1. O Sr. A. Venkataratnam, na terceira vaga autorizada como reservada de treino no quadro I, do mesmo Serviço.
2. O Sr. R. I. Jai Prakash, na vaga reservada de licença autorizada no quadro I, do mesmo Serviço. O período de treino do Sr. Jai Prakash, será porém considerado como em serviço, nos termos do F. R. 9(6).

Por ordem e em nome do Administrador de Goa, Damão e Diu.

D. V. Sawant, Subsecretário (Nomeações).

Panaji, 15 de Novembro de 1969.

Departamento das Finanças (Despesa)

Memorando

3-93/67/Fin(Exp) Vol.III

O Governo da India, Ministério do Interior, Nova-Delhi, por sua nota n.º 1/38/69-GP, de 19 de Novembro de 1969, equiparou o lugar de escriturário-chefe com o vencimento anterior à libertação de Rps. 366.66, exercido pelo Sr. Justino Filipe de Noronha, do Departamento de Excise, em Goa, ao de «Head Clerk», com a escala central de Rps. 210-10-290-15-320-EB-15-380, com a expressa condição de que seria um caso pessoal.

V. S. Srinivasagopalan, Subsecretário (Finanças).

Panaji, 2 de Dezembro de 1969.

Departamento das Finanças (Receita)

Despacho

Fin (Rev)/2-41/Part/2548/69

No uso das faculdades conferidas pela alínea (3) do artigo 5.º do «Goa, Daman and Diu Entertainment Tax Act, 1964» o Governo isenta do pagamento da taxa do imposto sobre diversões a apresentação do filme «Aashirvad» dirigido por Hrishikesh Mukherjee, no território da União de Goa, Damão e Diu.

Por ordem e em nome do Administrador de Goa, Damão e Diu.

Puran Singh, Secretário das Finanças.

Panaji, 2 de Dezembro, de 1969.

Finance (Control) Department

Order

Fin(Control)/11-38/68/2502

Shri C. S. Sadhale, Assistant Accounts Officer working in the Directorate of Accounts is hereby transferred and deputed on foreign service to the Junta de Comercio Externo (Board of External Trade) against the post of Chief Accountant (Scale Rs. 400-25-550-70-700) now held by Shri P. E. Narayanan, a S. G. clerk on deputation from the office of the Accountant General Madras. During his deputation on foreign service, Shri Sadhale will be entitled to the Standard terms of deputation as applicable to Central Government officers deputed to autonomous bodies. Order regarding fixation of his pay and other terms of appointment will issue separately.

2. On relief, Shri P. E. Narayanan, is posted in the Directorate of Accounts.

3. The persons concerned should be relieved immediately to join the posts as ordered above.

By order and in the name of the Administrator of Goa, Daman and Diu.

Puran Singh, Finance Secretary.

Panaji, 29th November, 1969.

Law and Judicial Department

Notification

LD/4/143/N-70-69

The following Notification No. 18/3/69-Judl. III dated 29th November, 1969 issued by the Ministry of Home Affairs, Government of India under section 4(1) of the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963 (Regulation 10 of 1963) is hereby re-published for general information of the public.

M. S. Borkar, Under Secretary.

Panaji, 6th December, 1969.

GOVERNMENT OF INDIA

MINISTRY OF HOME AFFAIRS

New Delhi, the 29th November, 1969

Notification

18/3/69-Judl. III

In exercise of the powers conferred by section 4(i) of the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963 (Regulation 10 of 1963), the President is pleased to appoint Shri C. Murahari Rao, Additional Judicial Commissioner, to act as Judicial Commissioner for the Union Territory of Goa, Daman and Diu, with effect from the forenoon of 27th November, 1969 during the absence on leave of the Judicial Commissioner.

Sd/-

K. THYAGARAJAN

Deputy Secretary to the Government of India.

Food and Civil Supplies Department

Notification

15-23-69-FCS(EDN)

1. Shri S. V. L. N. Row, a candidate recommended by the Union Public Service Commission, is hereby temporarily

Departamento das Finanças (Contrôle)

Portaria

Fin(Control)/11-38/68/2502

O Sr. C. S. Sadhale, «Assistant Accounts Officer» trabalhando na Direcção de Contabilidade, é transferido e colocado em comissão de serviço, na Junta de Comércio Externo, como contabilista-chefe (escala Rps. 400-25-550-70-700) funções ora exercidas pelo Sr. P. E. Narayanan, «S. G. clerk» em deputação da Repartição de Contabilidade Geral, de Madrastra. Durante o período da sua deputação, o Sr. Sadhale, terá direito às regalias normais de deputação, concedidas aos funcionários do Governo Central, destacados para organismos autónomos. A portaria referente à fixação do seu vencimento e outras condições da nomeação, será expedida separadamente.

2. Após ser dispensado das funções que actualmente exerce, o Sr. P. E. Narayanan, é colocado na Direcção de Contabilidade.

3. Os interessados deverão ser dispensados imediatamente, para entrarem no exercício das funções acima determinadas.

Por ordem e em nome do Administrador de Goa, Damão e Diu.

Puran Singh, Secretário das Finanças.

Panaji, 29 de Novembro de 1969.

Departamento de Justiça

Despacho

LD/4/143/N-70-69

Para conhecimento geral a seguir se torna a publicar o despacho n.º 18/3/69-Judl. III, de 29 de Novembro de 1969, do Ministério do Interior do Governo da Índia, ao abrigo do artigo 4(1) do «Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963 (Regulation 10 of 1963)».

M. S. Borkar, Subsecretário.

Panaji, 6 de Dezembro de 1969.

GOVERNO DA INDIA

MINISTÉRIO DO INTERIOR

Nova-Delhi, 28 de Novembro de 1969

Despacho

18/3/69-Judl. III

No uso das faculdades conferidas pelo artigo 4(i) do «Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963 (Regulation 10 of 1963)» o Presidente nomeia o Sr. C. Murahari Rao, Comissário Judicial Assistente, para exercer as funções de Comissário Judicial do território da União de Goa, Damão e Diu, a partir de 27 de Novembro de 1969, (antes do meio-dia), durante o impedimento do Comissário Judicial, que se encontra de licença.

Sd/-

K. THYAGARAJAN

Secretário adjunto do Governo da Índia.

Departamento de Alimentação e Abastecimento Civil

Despacho

15-23-69-FCS(EDN)

1. O Sr. S. V. L. N. Row, candidato recomendado pela Comissão de Serviço Público da União, é nomeado, temporariamente

appointed to the post of Lecturer in Economics in the Govt. Arts and Science College Daman in the scale of Rs. 400-400-450-30-600-35-670-EB-35-950 with effect from taking charge, until further orders.

2. The appointment is subject to the conditions specified in this office Memorandum No. 15-23-69-FCS(EDN) dated 15-10-1969 and the rules and regulations laid down by the Government from time to time.

By order and in the name of the Administrator of Goa, Daman and Diu.

V. H. Sakhalikar, Under Secretary (Planning).

Panaji, 1st December, 1969.

riamente, leccionador de economia, da Faculdade de Letras e Ciências do Governo, em Damão, na escala de Rps. 400-400-450-30-600-35-670-EB-35-950, a partir da data em que tomar posse, até ordens ulteriores.

2. A nomeação está sujeita às condições constantes do memorando n.º 15-23-69-FCS(EDN), de 15 de Outubro de 1969, e às normas e regulamentos formulados pelo Governo, periodicamente.

Por ordem e em nome do Administrador de Goa, Damão e Diu.

V. H. Sakhalikar, Subsecretário (Planificação).

Panaji, 1 de Dezembro de 1969.

Labour and Information Department

Order

LC/1/65/2373/69

The following Award given by the Industrial Tribunal, on an Industrial Dispute between M/s. V. M. Salgaocar & Brother Pvt. Ltd., Vasco da Gama, and the workmen employed under them in the Company's Offices, Shops and Depots, is hereby published as required vide provisions of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947):—

By order and in the name of the Administrator of Goa, Daman and Diu.

B. Ram, Secretary, Industries and Labour Department.

Panaji, 20th November, 1969.

Before Shri V. A. Naik, Industrial Tribunal, Goa, Daman and Diu

Reference (IT-GDD) No. 1 of 1966

Between

Messrs. V. M. Salgaocar & Brothers Pvt. Ltd., Vasco da Gama

And

The workmen employed under them in the Company's Office, Shops & Depots.

In the matter of pay scales, dearness allowance, gratuity, maternity leave, over time payment to motor drivers, provision of casual leave facilities etc.

Appearances:

Shri V. V. Phadke, Advocate, with Shri L. R. Ferrao, Personnel Officer for the company.

Shri Madan Phadnis, Advocate, for the workmen.

AWARD

This reference purports to have been made by Order and in the name of the Administrator of the Union Territories of Goa, Daman and Diu under the signature of the Secretary, Industries and Labour Department on 15th September 1966, for the adjudication of a dispute relating to pay scales, dearness allowance, gratuity, maternity leave, over-time payment for motor drivers and provision for canteen facilities between V. M. Salgaocar and Brothers Pvt. Ltd., and the workmen employed under them in the Company's office, shops and depots.

2. The Notification referring the dispute to this Tribunal runs thus:

«Whereas the Government of Goa, Daman and Diu has considered the report submitted by the Labour Commissioner and conciliation officer under sub-section (4) of Section 12 of the Industrial Disputes Act, 1947, (XIV of 1947) in respect of the dispute between Messrs. V. M. Salgaocar and Brothers Pvt. Ltd., Vasco da Gama and the workmen employed under them in the Company's office, shops and depots, over the demands mentioned in the Schedule appended hereto;

And whereas the Government of Goa, Daman and Diu after considering the aforesaid report is satisfied that there is a case for referring the dispute to the Tribunal;

Now, therefore, in exercise of the powers conferred by sub-section (5) of Section 12 of the Industrial Disputes Act, 1947, the Government of Goa, Daman and Diu is pleased to refer the said dispute for adjudication to the Tribunal consisting of Shri Sayed Taki Bilgrami, constituted under Government Notification No. LC/1/63 dated 30th October, 1963;»

The Goa Trade and Commercial Workers Union have filed their statement of claim. The company has also put in their written statement. The company however have raised a preliminary point as follows:

«At the outset the company says and submits that the reference dated 15th September, 1966 purporting to have been made by Government under Section 12(5) of the Industrial Disputes Act, 1947, is not competent and is bad in law and, that, therefore, this Hon'ble Tribunal has no jurisdiction to entertain the same. In the submission of the Company, the proper section under which a reference could be validly made by the appropriate Government is Section 10 of the Act which is not even referred to in the order of reference. The company, therefore, submits that the reference is liable to be dismissed on this ground alone. The statements and submission made herein below are without prejudice to what has been stated above».

Shri N. V. Phadke on behalf of the company contended that Section 12(5) of the Industrial Disputes Act does not confer any power of referring any dispute to a Tribunal and in so far as the reference has been made by the Government in exercise of the powers conferred by Section 12(5) the reference is invalid. In support of this argument Shri Phadke has relied upon the decision of the Supreme Court in State of Bombay vs. Krishnan, 1960 I.L.L.J. 592.

3. In order to appreciate the preliminary objection it is necessary to refer in some detail to the provisions of Section 10 and Section 12 of the Industrial Disputes Act. Section 10 appears in Chapter III under the heading «Reference of Disputes to Boards, Courts or Tribunals». Section 10 is divided into 7 sub-sections. Section 10(1) provides as follows:

«Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing—

- refer the dispute to a Board for promoting a settlement thereof, or
- refer any matter appearing to be connected with or relevant to the dispute to a Court of Inquiry; or
- refer the dispute or any matter appearing to be connected with, or relevant to the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
- refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second or Third Schedule, to a Tribunal for adjudication;

Pausing here for a moment before considering the effect of the two provisos to this sub-section it is necessary to analyse the provisions and to consider their effect. The existence of a dispute or the apprehension of a dispute is the very foundation for ordering the reference of the dispute to the appropriate forum. The Government must form an opinion that either a dispute exists in fact or that a dispute

is apprehended. It is the subjective satisfaction of the Government on the point of the actual existence or apprehension of the dispute which is not justiciable but must be clear from the order that Government have applied their mind and have formed the opinion that the dispute exists or is apprehended. After forming their opinion on this material question, the Government has four options before them: The first option is to refer the dispute to a Board for promoting a settlement, the second is that they may refer any matter relevant to the dispute to a Court of Inquiry, the third is that they may refer the dispute to a Labour Court for adjudication if the same relates to a matter specified in the Second Schedule and the fourth is that they may refer the dispute to a Tribunal for adjudication, whether it relates to any matter specified in the Second or Third Schedule. These options given under Section 10(1) make it clear that although the Government may be satisfied about the existence of a dispute or its apprehension they are not bound to refer it to the Tribunal for adjudication. They may refer the dispute to other forums mentioned in clauses (a), (b) or (c) or they may not refer the dispute to any forum at all. When the dispute relates to a matter specified in the Second Schedule ordinarily the Government may refer the dispute to a Labour Court for adjudication but it is not bound to do so. It may refer it to a Tribunal for adjudication notwithstanding that it relates to a matter specified in the Second Schedule. The first proviso comes into the picture at this stage. The first proviso says that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than 100 workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c). That means that even when a dispute relates to any matter specified in the Third Schedule, the Government is not bound to refer it to an Industrial Tribunal under clause (d). They may refer it to a Labour Court when they find that the number of workmen affected is 100 or less. Here the exercise of discretion of the Government would depend upon the magnitude of the dispute judged from the number of persons affected thereby.

4. The second proviso also throws light upon the working of the mind of the Legislature. It stipulates that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section. In other words when the dispute relates to a public utility service and notice of strike has been given under Section 22, ordinarily it is the duty of Government to refer the dispute to a Tribunal. The wide discretion conferred by the use of the word «may» in sub-section (1) has been limited in this proviso by the use of the word «shall» but from the context it is clear that even the word «shall» does not impose any absolute obligation upon the Government because Government has further to consider two aspects namely (1) whether the notice under Section 22 has been frivolously or vexatiously given and (2) whether it would be inexpedient to refer the dispute.

5. Sub-section (2) of Section 10 provides as follows:

«Where the parties to an industrial dispute apply in the prescribed manner whether jointly or separately, for a reference of the dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly».

That means that when both the parties agree to a reference of a dispute being made to one of the forums then the Government has no option but to refer the dispute to that forum. The only point which the Government have to take into account is whether the persons applying represent the majority. The difference in the language of sub-section (1) and sub-section (2) of Section 10 is striking and indicates the difference in scope on the exercise of powers of the Government in the matter of making a reference.

6. Sub-section (3) again is of great significance. It provides:

«Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference».

The powers to prohibit the continuance of a strike or a lock-out can be exercised only when the dispute has been referred to a Board, Labour Court, Tribunal *under this section*. Sub-section (4) relates to the powers of adjudication. In substance this sub-section provides that when in an order of reference the appropriate Government has specified the points of dispute for adjudication, the Labour Court, Tribunal or National Tribunal as the case may be, shall confine its adjudication to these points and matters incidental thereto. In this sub-section also the use of the words '*in an order referring an industrial dispute ... under this section*' are significant. The powers of adjudication are confined to the points specified in the order of reference only when the reference has been made under Section 10. Sub-section (5) in effect says that where a dispute concerning any establishment is referred to a Labour Court, Tribunal, etc., under this section and the appropriate Government is of opinion that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may at any time include in the reference such establishment, group or class of establishments whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments. This sub-section enlarges the powers of the Government to include establishments of a similar nature which are likely to be affected by the adjudication notwithstanding that actually no dispute exists or is apprehended in those establishments. It is not necessary to refer to sub-section (6) and sub-section (7) for our present discussion.

7. I will now turn to the analysis of Section 12. This section appears in Chapter IV and the heading of the Chapter is «Procedure, Powers and Duties of Authorities». The heading itself suggests that it relates to the procedure and the powers of the authorities, presumably other than the Government. Section 12 refers to the duties of conciliation officers. Sub-section (1) of Section 12 provides as follows:

«Where an industrial dispute exists or is apprehended, the conciliation officer, may, or where the dispute relates to a public utility service and a notice under Section 22 has been given shall, hold conciliation proceedings in the prescribed manner».

In the first case the conciliation officer has a discretion while in the second case he is under an obligation to admit the matter in conciliation. In either case the Conciliation Officer must be satisfied that a dispute exists or is apprehended. Sub-section (2) speaks of investigation to be made by the Conciliation Officer for the purpose of promoting a settlement. Sub-section (3) envisages a settlement being reached in the course of conciliation proceedings. Sub-section (4) is relevant for our present purpose. It reads thus:

«If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which in his opinion, a settlement could not be arrived at».

The report which the conciliation officer is expected to make under sub-sec. (4) is to serve as a guide to the Government for coming to the conclusion that there is a good case for making a reference. This is apparent from the provisions of sub-sec. (5) which runs thus:

«If, on a consideration of the report referred to in sub-sec. (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor».

It would appear from the wording of this sub-section that on a consideration of the report the appropriate Government must come to the conclusion that there is a prima facie case for making a reference. For coming to this conclusion the Government is not bound to confine themselves to what is stated in report. It would be open for them to peruse other materials and take other circumstances into account, but it is their duty to take the report submitted by the conciliation officer into account. The expression in the sub-section, «it may make such reference» is extremely important. This expression connotes that Government must be satisfied that there is a case for reference. In a case

where the matter has been admitted in conciliation and the conciliation officer has submitted a failure report the Government after taking that report into consideration must still be satisfied that there is a *prima facie* case. On that satisfaction it may make a reference. In other words this is the second stage where the Government has to exercise its discretion. It is not enough that Government is satisfied that a dispute exists or is apprehended, it must further be satisfied that there is a case for reference. Even after both these conditions are satisfied the Government is not bound to make the reference as the words 'it may make a reference' clearly imply. But when Government do not make a reference it is obligatory on them to record reasons for not making a reference and also to communicate to the parties the reasons therefor. What is really a matter for subjective satisfaction so far as the existence or apprehension of a dispute is concerned becomes a matter where the Government must disclose its mind as to why they do not choose to make a reference notwithstanding that there is a *prima facie* case for a reference. When however the sub-section says that Government may make a reference it does not mean that they can make a reference under Section 12(5). The power to make a reference is conferred under Section 10 and that section alone. When the section says it may make a reference it means that it may make such a reference in exercise of the powers vested in them under Section 10.

8. I will now proceed to analyse the notification. It consists of 3 paragraphs. The first paragraph says that Government has considered the report submitted by the conciliation officer under sub-section (4) of Section 12 in respect of the dispute between the parties. The second para says that after considering the aforesaid report the Government is satisfied that there is a case for referring the dispute to the Tribunal. The third para is the operative portion of the notification and in effect it says that in the exercise of the power conferred under sub-section (5) of Section 12 of the Industrial Disputes Act the Government is pleased to refer the said dispute for adjudication to the Tribunal. It is clear from a reading of the three paragraphs that all that Government has done in this case is to consider the report submitted by the conciliation officer under Section 12(4) and on such consideration have formed the opinion that this is a case for referring the dispute to the Tribunal and having been satisfied that there was a case for referring the dispute they purported to exercise the power of making a reference under Section 12(5) of the Industrial Disputes Act. As explained above Section 12(5) confers no power on the Government to refer any dispute to any Tribunal. The power of reference flows from Section 10 and Section 10 alone. What the Government is required to do under Section 12(5) is to see whether there is a case for reference and after satisfying itself that there is such a case then fall back upon Section 10 and pass the order of reference. There is no indication whatsoever that the provisions of Section 10 were present to the mind of the Government. As I have stated above the very foundation of Government's power for ordering a reference is the satisfaction of Government about the existence of a dispute or apprehension of a dispute. There is nothing to indicate on the face of the notification that Government is satisfied that a dispute exists or is apprehended. Shri Madan Phadnis drew my attention to the opening words of Section 12 'where an industrial dispute exists or is apprehended' and contended that the conciliation officer cannot proceed without being satisfied that an industrial dispute exists or is apprehended. Section 12 does not require the conciliation officer to form an opinion about the existence or apprehension of a dispute. The action of the conciliation officer is not liable to be challenged on the ground that there is nothing on the face of the record to show that he has formed the opinion about the existence of a dispute or its apprehension. Assuming that the conciliation officer also is under an obligation to form an opinion on that question, what must appear on the face of the record is that Government also has formed an opinion on the question of the existence of a dispute or that they have an apprehension about the dispute. The satisfaction of the conciliator cannot take the place of the satisfaction of Government. The Government must come to their own conclusion that a dispute exists or is apprehended, and it must appear from the record that Government has applied its mind and formed its opinion.

9. The matter does not rest there. Section 10 gives a number of options to the Government as explained above. It may refer the matter falls in dispute to any of the four forums including a Tribunal. Again Government has to make up its mind whether the matters in the Second or the Third Schedule. If it falls in Schedule III, again the Government may think it appropriate to refer the dispute to a Labour

Court in preference to an Industrial Tribunal having regard to the nature and magnitude of the dispute. Furthermore Government must consider whether the dispute relates to a public utility service and whether there has been a notice of strike and whether that notice was vexatiously or frivolously given. It appears to me that the Government have almost abandoned their function of considering the question from the various points. They seem to Labour under the impression that when there is a failure report submitted by the conciliator, the Government has no option but to refer the dispute to the Tribunal. That is the plain meaning of the words used in the three paragraphs of the notification. The last but not the least point to be taken into account is that Government have specifically stated that they are making a reference in exercise of the powers conferred under sub-section (5) of Section 12. Section 12(5) confers no such power.

9A. This question has been considered by the Supreme Court in the State of Bombay vs. Krishnan, 1960 II. L. L. J. p. 592. The Supreme Court has taken the view that the power of making a reference is conferred by Section 10 and there is no separate power conferred on the Government under Sec. 12(5) of the Industrial Disputes Act. Shri Madan Phadnis contends that the observations of the Supreme Court relating to Government's power of reference are in the nature of obiter dicta. What happened in that case was that on receipt of the failure report from the conciliator under Sec. 12(4) the Government of Bombay refused to refer the dispute relating to bonus to the Tribunal on the ground that the workmen had resorted to go slow tactics which according to the Government disentitled the workmen from claiming bonus. A single Judge of the High Court held that the reasons given by the Government for refusing to refer the dispute were not germane to the matter in issue and were really extraneous, and Government therefore was not justified in refusing to refer the dispute on such extraneous grounds. This view was subsequently up-held by a Division Bench in appeal preferred from the judgment of the single Judge. While dismissing the appeal the learned Judges considered in detail the effect of Sec. 12(5) and held that there is a separate power under Sec. 12(5) vested in the Government for making a reference on the receipt of the report of the conciliator. It is true that the case which their Lordships of the Supreme Court considered did not relate to the notification stating that Government was making the reference in exercise of the powers vested in them under Sec. 12(5). At the same time the interpretation of Sec. 12(5) was a matter which was directly in issue particularly in view of the decision of the Division Bench of the High Court. The Supreme Court has considered the scope of Sec. 12(5) in great detail. It has also examined the sub-sections of Sec. 10 and compared them with Sec. 12(5). The decision therefore is a deliberate and considered decision which arose out of the issues involved in that case. It is impossible to characterise the observations of the Supreme Court as obiter dicta. In terms the Supreme Court held that Sec. 12(5) of the Industrial Disputes Act does not confer any power upon the Government for referring a dispute for adjudication. The High Court had taken the view that in cases where a dispute has been admitted in conciliation and the conciliation officer has submitted a failure report Sec. 12(5) conferred a distinct power on the Government to make a reference. The Supreme Court negating this view pointed out that the fountain from which the power of making a reference flows is Section 10 and under that section the Government has the discretion as to whether a reference should or should not be made notwithstanding that the conciliation officer has made a report recommending a reference of the dispute. The Supreme Court also pointed out that all that the Government need do under Sec. 12(5) is to consider the report and come to the conclusion whether there is a *prima facie* case for making a reference. If they are satisfied that there is a *prima facie* case for making a reference they will fall back upon the powers vested in them under Section 10. If Government do not possess any power under Sec. 12(5) and if they purport to refer the dispute in exercise of such power it is evident that the reference is bad.

10. Shri Madan Phadnis contended that the order of reference is not vitiated merely because it does not refer to Section 10. He pointed out that there is no dispute that Government have such power under Section 10. According to him, if they have such power and if they have exercised that power, such exercise of power is not bad merely by non-mention of the section. This argument is fallacious for more than one reason. Firstly not only there is an omission to refer to Section 10 in the order of reference but even the substance of Section 10 or the contents of Section 10 have not been referred to. The Government have gone further and have referred a wrong section namely

Section 12(5) as being the source from which the power to make a reference flows. As discussed elaborately above it is not merely a case of omission or a case of non-observance of an unessential technicality. This is a case of non-application of the mind. The order of reference does not show that Government were aware that they had a discretion whether to refer the dispute or not to refer the dispute in spite of the fact that a report under Section 12(4) had been submitted by the conciliation officer. The tenor of the order suggests that Government felt that in view of the report of the conciliation officer and in view of the fact that there was a prima facie case they had no other alternative but to refer the dispute to the Industrial Tri-

bunal. Considering the question from any point of view I feel no hesitation in holding that the order of reference is bad and there is no valid reference to this Tribunal. The Tribunal therefore cannot proceed to adjudicate upon the dispute underlying the reference.

11. For the aforesaid reasons, this reference—stands disposed of.

V. A. NAIK
Industrial Tribunal.

Bombay, October 17th, 1969.

Notification

LC/Est/21-MTW/69/1068

In exercise of the powers conferred by sub-section (1) of Section 4 of the Motor Transport Workers' Act, 1961 (Act No. 27 of 1961) and in supersession of all previous Govt. Notifications on this matter (No. LC/21/66/2956 dated 15-11-66 and No. LC/21/67 dated 29-3-1967) the Lieutenant Governor of Goa, Daman and Diu, hereby appoints the Officers mentioned in column No. 2 of the Schedule appended hereto, as Inspectors for all the purposes of the said Act, within the local limits mentioned in the corresponding entry of column No. 3 of the said Schedule.

SCHEDULE

Sl. No.	Officer	Local limits
1	2	3
1.	Factory Inspector, Panaji, Goa.	Throughout the Union Territory of Goa, Daman & Diu.
2.	Labour Inspector, Panaji, Goa.	Goa District.

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

V. R. Vaze, Under Secretary, Industries and Labour Department.

Panaji, 27th November, 1969.

Public Health Department

Order

V-2/69-GMC/6690

Dr. Virender Nath Sehgal, a candidate selected by the Union Public Service Commission, is hereby temporarily appointed to the post of Professor of Venereology and Dermatology in the Goa Medical College with effect from 3-11-69 (F.N.) on the terms and conditions contained in Government Memorandum No. V-2/69-GMC/6690 dated 5-9-69.

By order and in the name of the Administrator of Goa, Daman and Diu.

V. R. Vaze, Under Secretary (Health).

Panaji, 29th November, 1969.

Order

V-2/69/GMC/7610

Dr. Pritam Lal Verma, a candidate selected by the Union Public Service Commission, is hereby temporarily appointed to the post of Assistant Professor of E. N. T. in the Goa Medical College with effect from 4-11-69 (F.N.) on the terms

Despacho

LC/Est/21-MTW/69/1068

No uso das faculdades conferidas pela alínea (1) do artigo 4.º do «Motor Transport Workers' Act, 1961 (Act No. 27 of 1961)» e em substituição de todos os despachos anteriores a este respeito (n.º LC/21/66/2956, de 15 de Novembro de 1966 e n.º LC/21/67, de 29 de Março de 1967), o Governador-tenente da Goa, Damão e Diu, nomeia os oficiais mencionados na 2.ª coluna do quadro a este anexo, Inspectores para os fins do dito Act, dentro dos limites locais, indicados na 3.ª coluna correspondente ao dito quadro.

QUADRO

N.º da série	Oficial	Limites locais
1	2	3
1.	Inspector de Fábrica, Panaji, Goa.	Por todo o território da União de Goa, Damão e Diu.
2.	Inspector de Trabalho, Panaji, Goa.	Distrito de Goa.

Por ordem e em nome do Governador-tenente de Goa, Damão e Diu.

V. R. Vaze, Subsecretário do Departamento de Indústrias e Trabalho.

Panaji, 27 de Novembro de 1969.

Departamento de Saúde Pública

Portaria

V-2/69-GMC/6690

Dr. Virender Nath Sehgal, candidato escolhido pela Comissão de Serviço Público da União, é nomeado, temporariamente, professor de venereologia e dermatologia da Faculdade de Medicina de Goa, com efeito a partir de 3 de Novembro de 1969 (antes do meio-dia) nos termos e condições constantes do memorando n.º V-2/69-GMC/6690, de 5 de Setembro de 1969.

Por ordem e em nome do Administrador da Goa, Damão e Diu.

V. R. Vaze, Subsecretário (Saúde).

Panaji, 29 de Novembro de 1969.

Portaria

V-2/69/GMC/7610

Dr. Pritam Lal Verma, candidato escolhido pela Comissão de Serviço Público da União, é nomeado, temporariamente, professor assistente de E. N. T. da Faculdade de Medicina de Goa, a partir de 4 de Novembro de 1969 (antes do meio-

and conditions contained in Government Memorandum No. V-2/69-GMC/7610 dated 22-9-69.

By order and in the name of the Administrator of Goa, Daman and Diu.

V. R. Vaze, Under Secretary (Health).

Panaji, 29th November, 1969.

Order

A-13/68-DHS/8037

A tentative list of seniority of the Class I officers in the Directorate of Health Services, Goa, was circulated to all concerned on 3rd September 1969. After considering representations/objections received against that list, it has been decided that the final seniority list should be as indicated below:

1. Dr. Emidio Afonso.
2. Dr. Gurudas Sardessai.
3. Dr. Jose Bento Egipsy.
4. Dr. Miguel Estevan Afonso.
5. Dr. A. C. Vaga.
6. Dr. Antonio Romualdo Almeida.
7. Dr. Norman F. Pereira.
8. Dr. Transfiguração Silva.
9. Dr. Antonio M. Mesquita.
10. Dr. George Menezes.
11. Dr. Alirio Fernandes.
12. Dr. Vicente Xavier Lobo.
13. Dr. (Smt.) Aurea Estibeirol Ataide.
14. Dr. Francisco Jesus Lopes.
15. Dr. Dinanath S. Rao.
16. Dr. Roberto Dias.
17. Dr. Jacinto dos Milagres Estibeirol.

By order and in the name of the Administrator of Goa, Daman and Diu.

B. Ram, Secretary, Industries and Labour Department.

Panaji, 28th November, 1969.

Order

A-2/69-DHS/7253

Dr. Satish Kumar Suri, a candidate selected by the Union Public Service Commission, is temporarily appointed to the post of Public Health Dentist and posted in charge of Dental Clinic, Vasco-da-Gama, under the Directorate of Health Services, vice Dr. Shashikant Sardessai, Public Health Dentist transferred to Mobile Dental Clinic, Panaji, with effect from 30-10-1969, on the terms and conditions contained in the Government letter no. A-2/69-DHS/7253 dated 8-9-1969.

By order and in the name of the Administrator of Goa, Daman and Diu.

B. Ram, Secretary, Industries, Labour and Health.

Panaji, 2nd December, 1969.

dia) nos termos e condições constantes do memorando n.º V-2/69-GMC/7610, de 22 de Setembro de 1969.

Por ordem e em nome do Administrador de Goa, Damão e Diu.

V. R. Vaze, Subsecretário (Saúde).

Panaji, 29 de Novembro de 1969.

Portaria

A-13/68-DHS/8037

Uma lista provisória de antiguidade de Classe I, da Direcção dos Serviços de Saúde, de Goa, foi circulada pelos interessados, em 3 de Setembro de 1969. Depois de ter sido considerado as reclamações e objecções recebidas, contra a mesma lista, foi resolvido que a lista final de antiguidade, deverá ser como a seguir se indica:

1. Dr. Emidio Afonso.
2. Dr. Gurudas Sardessai.
3. Dr. José Bento Egipsy.
4. Dr. Miguel Estevan Afonso.
5. Dr. A. C. Vaga.
6. Dr. António Romualdo Almeida.
7. Dr. Nórman F. Pereira.
8. Dr. Transfiguração Silva.
9. Dr. António M. Mesquita.
10. Dr. George Menezes.
11. Dr. Alirio Fernandes.
12. Dr. Vicente Xavier Lobo.
13. Dr. (Sr.ª) Aurea Estibeirol Ataide.
14. Dr. Francisco Jesus Lopes.
15. Dr. Dinanath S. Rao.
16. Dr. Roberto Dias.
17. Dr. Jacinto dos Milagres Estibeirol.

Por ordem e em nome do Administrador de Goa, Damão e Diu.

B. Ram, Secretário do Departamento de Indústrias e Trabalho.

Panaji, 28 de Novembro de 1969.

Portaria

A-2/69-DHS/7253

Dr. Satish Kumar Suri, candidato escolhido pela Comissão de Serviço Público da União, é nomeado temporariamente, dentista de saúde pública e colocado como encarregado da clínica dental, em Vasco da Gama, subordinada à Direcção dos Serviços de Saúde, em substituição do Dr. Shashikant Sardessai, dentista de saúde pública, transferido para a clínica dental móvel, em Panaji, a partir de 30 de Outubro de 1969, nos termos e condições constantes da nota n.º A-2/69-DHS/7253, de 8 de Setembro de 1969.

Por ordem e em nome do Administrador de Goa, Damão e Diu.

B. Ram, Secretário de Indústrias, Trabalho e Saúde.

Panaji, 2 de Dezembro de 1969.